

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STACEY W. NIELSEN,

Defendant.

CASE NO. 8:04CR151

**MEMORANDUM
AND ORDER**

This matter is before the Court on Defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" ("§ 2255 motion") (Filing No. 47) and the Defendant's "Motion for Default" (Filing No. 52).

The Defendant was sentenced on October 14, 2004. Attached to the § 2255 motion is a letter to the Defendant from defense counsel stating that he neglected to file a notice of appeal as he had discussed with the Defendant.

In his § 2255 motion, the Defendant raises a claim of ineffective assistance of counsel based on counsel's apparent failure to file an appeal. Upon initial review, this Court ordered the Government to file an Answer responding to Defendant's § 2255 motion. (Filing No. 50). In its answer, the Government concedes that the Defendant is entitled to relief and requests that this court fashion relief for the Defendant. (Filing No. 51).

THEREFORE, IT IS ORDERED:

1. The Defendant's "Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (Filing No. 47) is granted;
2. The Defendant's Motion for Default (Filing No. 52) is denied as moot;

3. The Defendant must file his notice of appeal within thirty (30) days from the date of this Order;
4. A separate Judgment will be issued; and
5. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 28th day of November, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge